

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

DOUGLAS I. HORNSBY, Administrator of)
The Estate of CYNTHIA GARY,)
)
Plaintiff,) Case 2:22-cv-00427
)
v.) In Admiralty
)
THE UNITED STATES OF AMERICA, *et al.*,)
)
Defendants.)
)

**THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, TO DISMISS CERTAIN CLAIMS**

The United States moves for summary judgment or dismissal of Plaintiff's claims on the grounds that the United States has breached no legal duty owed to Plaintiff's decedent. The United States' duties as the owner of the McFAUL are set forth by the seminal Supreme Court case *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S. 156 (1981). Because there is no evidence that the United States violated any of the three *Scindia* duties, the Court should grant this motion for summary judgment and dismiss all of Plaintiff's claims against the United States.

Alternatively, if summary judgment is not granted, several of Plaintiff's claims should be dismissed for lack of subject matter jurisdiction, narrowing the issues in the case. Specifically, Plaintiff's claims challenging the Navy's tag out procedures and the design of certain equipment on the McFAUL challenge conduct that is both discretionary and susceptible to policy analysis, therefore the discretionary function exception to the United States' waiver of sovereign immunity applies.

A memorandum in support of this motion, and exhibits thereto, are attached. Exhibits 3, 4, 12, 15, 22, and 23 are covered under the protective order (Dkt. 32) and are filed under seal.

Dated: January 30, 2025

Respectfully submitted,

UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of electronic filing (NEF) to the following counsel of record:

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